

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF MEDICARE PAYMENTS
FOR SERVICES PROVIDED TO
INCARCERATED BENEFICIARIES
IN THE STATE OF TEXAS**



**JANET REHNQUIST
Inspector General**

**OCTOBER 2002
A-06-02-00008**

Office of Inspector General

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Office of Audit Services
1100 Commerce, Room 632
Dallas, TX 75242

October 31, 2002

Common Identification Number: A-06-02-00008

Dr. James R. Farris, MD :
Regional Administrator
Centers for Medicare and Medicaid Services
1301 Young Street, Room 714
Dallas, Texas 75202

Dear Dr. Farris:

Attached is a copy of our final report entitled, "Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries in the State of Texas."

In written comments, the Regional Administrator for the Centers for Medicare and Medicaid Services (RACMS) generally concurred with our recommendations and agreed to take corrective actions. The RACMS comments are included as an appendix to our report.

We would appreciate your views and information on the status of any action taken or contemplated on the recommendations within the next 60 days. If you have any questions, please contact me at (214) 767-9206 or e-mail at gsato@oig.hhs.gov.

To facilitate identification, please refer to Common Identification Number A-06-02-00008 in all correspondence relating to this report.

Sincerely Yours,

Gordon Sato
Regional Inspector General
for Audit Services

Enclosures – as stated

EXECUTIVE SUMMARY

OBJECTIVE

At the request of Senator Grassley, Senate Finance Committee, we undertook a review of Medicare payments for services provided to incarcerated beneficiaries. The objective of our review was to determine whether Medicare fee-for-service claims paid in 10 States during the 3-year period of January 1, 1997 through December 31, 1999 were in compliance with Federal regulations and Centers for Medicare & Medicaid Services (CMS) guidelines. The State of Texas was 1 of the 10 States selected for review.

Senator Grassley's request was made at the April 25, 2001 Senate Finance Committee hearing held to address improper payments in Federal programs. At this hearing, we released our report entitled, *Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries*, in which we found that the Medicare program had paid \$32 million in fee-for-service payments on behalf of 7,438 incarcerated beneficiaries during the 3-year period mentioned above. Generally, no Medicare payments should be made when a beneficiary is in State or local custody under a penal authority since the State or other government component is responsible for their medical and other needs. This is a rebuttable presumption that may be overcome only if certain strict conditions are met. These conditions are that there must be a State or local law requiring all such individuals, or groups of individuals, repay the cost of medical services *and* the incarcerating entity must enforce this requirement by diligently pursuing collection.

FINDINGS

In order to determine the extent of improper Medicare payments made on behalf of incarcerated beneficiaries, we reviewed a randomly selected statistical sample of 100 claims from each of 10 selected States. The States selected represented about 70 percent of the \$32 million mentioned in our April 25, 2001 report and the claims reviewed were for services in the 3-year period covered in that report.

During our reviews in the 10 States, we found that Medicare payments are allowable for some categories of beneficiaries who are in custody under penal statute while unallowable for other categories of beneficiaries in custody under penal statute. This has occurred because regulations and CMS guidelines require that the State or local law requiring repayment of the costs of medical services and the enforcement requirements may apply to categories of individuals, rather than to all individuals. A category of beneficiaries is comprised of beneficiaries with the same legal status (e.g., not guilty by reason of insanity (NGRI)). (Therefore, the allowability of a Medicare payment depends on the beneficiary's specific category of legal status even though he or she is in custody under a penal statute. During our review we found this was an important distinction. Texas is required to pay for the health care costs for prisoners who are incarcerated under the Texas Department of Criminal Justice (TDCJ) jurisdiction. However, Texas law requires that patients admitted to any State, community mental health center, or psychiatric hospital pay their own expenses for medical and psychiatric care and

treatment. Payment for 35 of the 100 claims sampled in Texas was made on behalf of 20 beneficiaries placed in State or county-operated psychiatric facilities after they were found to be NGRI or incompetent to stand trial (IST). Because Texas state laws require that these individuals be responsible for their healthcare costs, Medicare payments for these patients were proper. Payment for an additional 55 of the claims sampled in Texas were allowable because the payments were made on behalf of 36 beneficiaries not in custody during the time services were provided. These 90 payments totaled \$45,034.

However, we found that Medicare payments for five claims totaling \$150 were improper because, at the time the service was provided, the five beneficiaries came under the jurisdiction of the TDCJ or local jurisdictions. The State of Texas or the local government was responsible for their health needs.

We were unable to determine the exact whereabouts of five beneficiaries at the time the services were rendered for the remaining five claims, totaling \$151. Therefore, we could not determine Medicare allowability. Passage of time and transfers between facilities contributed to making the process of determining the custody status of the beneficiary at the time of service a cumbersome and difficult task. As a result of our April 25, 2001 report, CMS plans to establish an edit in its Common Working File (CWF) that will deny claims for incarcerated beneficiaries. Claims meeting the conditions for payment will not be subject to this edit if the supplier or provider submitting the claim certifies, by using a modifier or a condition code on the claim, that he or she has been instructed by the State or local government component that it is appropriate to bill Medicare for these services.

RECOMMENDATIONS

We believe when fully implemented the planned CWF edit will prevent many improper payments for claims of incarcerated beneficiaries. However, we believe CMS and its contractors will need to educate suppliers and providers on the proper use of the modifier or condition code. Also, claims with the modifier or condition code must be monitored to assure the conditions under regulations at 42 CFR 411.4 (b) required for payment are, indeed, being met.

In their written response to our draft report, CMS officials agreed with the findings and recommendations and stated they will work with the contractors in Region VI to ensure that our recommendations are carried out properly. They believe the recommended edit will be operational on April 1, 2003. (For complete text, see appendix A).

BACKGROUND

Under current Federal law and regulations, Medicare payments made on behalf of beneficiaries in the custody of law enforcement agencies are generally unallowable except when certain requirements are met.

Under sections 1862(a)(2) and (3) of the Social Security Act, the Medicare program will not pay for services if the beneficiary has no legal obligation to pay for the services or if the services are paid directly or indirectly by a government entity. Furthermore, regulations at 42 CFR 411.4 state in part that:

- (a) General rule: Except as provided in 411.8(b) (for services paid by a governmental entity), Medicare does not pay for a service if: (1) the beneficiary has no legal obligation to pay for the service; and (2) no other person or organization (such as a prepayment plan of which the beneficiary is a member) has a legal obligation to provide or pay for that service.*
- (b) Special conditions for services furnished to individuals in custody of penal authorities. Payment may be made for services furnished to individuals or groups of individuals who are in the custody of the police or other penal authorities or in the custody of a government agency under a penal statute only if the following conditions are met:*
 - (1) State or local law requires those individuals or groups of individuals to repay the cost of medical services they receive while in custody.*
 - (2) The State or local government entity enforces the requirement to pay by billing all such individuals, whether or not covered by Medicare or any other health insurance, and by pursuing collection of the amounts they owe in the same way and with the same vigor that it pursues the collection of other debts.*

Under these criteria, Medicare payments on behalf of prisoners in custody of Federal authorities are not allowable since these prisoners by definition are not subject to State or local laws regarding the terms of their care. For prisoners in custody of State or local government entities, the component operating the prison is presumed to be responsible for the medical needs of its prisoners. This is a rebuttable presumption that must be affirmatively overcome by the initiative of the State or local government entity. There must be a law requiring all individuals or groups of individuals in their custody to repay the cost of medical service. In addition, the entity must establish that it enforces the requirement to pay by billing and seeking collection from all individuals or groups of individuals in custody, whether insured or uninsured, with the same vigor it pursues the collection of other debts. Guidelines in CMS contractor manuals state the government entity must enforce the requirement to pay and seek collection from all individuals in custody with the same legal status (e.g., NGRI).

Section 202(x)(1)(A) of the Social Security Act requires the Social Security Administration (SSA) to suspend Old Age and Survivors and Disability Insurance (i.e., Social Security benefits) to persons who are incarcerated. To implement this requirement, SSA, with the assistance of the Federal Bureau of Prisons (FBOP) and

various State and local entities, developed and maintains a database of incarcerated individuals.

The Office of Inspector General matched a file of incarcerated Medicare beneficiaries provided by SSA to CMS's National Claims History file for claims paid between January 1, 1997 and December 31, 1999. Based on the matching, we compiled a database of claims paid on behalf of beneficiaries whose SSA payments had been suspended due to incarceration on the dates of service. We created a listing for Texas that included 3,873 claims totaling \$1,798,523. Using the Texas listing, we selected a random statistical sample of 100 fee-for-services claims totaling \$45,335 paid during the January 1, 1997 through December 31, 1999 for review.

OBJECTIVE, SCOPE AND METHODOLOGY

Our objective was to determine whether Medicare payments for services provided to beneficiaries reported to be incarcerated during the period January 1, 1997 through December 31, 1999 were in compliance with regulations and CMS guidelines. To achieve our objective, we:

- Reviewed applicable Federal laws and regulations, Medicare reimbursement policies and procedures, and pertinent provisions of the Social Security Act pertaining to incarcerated beneficiaries.
- Discussed with CMS officials in Region VI the Medicare criteria involving incarcerated beneficiaries and ascertained if contractors were aware of any Medicare guidelines for health care services furnished to incarcerated beneficiaries.
- Reviewed applicable Texas laws and regulations pertaining to health care cost liabilities for incarcerated beneficiaries and other individuals in the penal system.
- Conducted inquiries and researched local laws to determine if counties, where the individuals in our sample were incarcerated, have laws requiring inmates to pay for the cost of their health care.
- Held discussions with officials of the Medicare fiscal intermediary and carrier in Texas to ascertain if they have controls in place to detect claims submitted on behalf of incarcerated beneficiaries.
- Reviewed a sample of Medicare and non-Medicare claims to determine if collection procedures were adequate and applied uniformly for all claims.
- Checked the FBOP database to determine if any beneficiaries, whose incarceration status on the date of service could not be determined, were confined in a Federal prison.

- Contacted the Texas Department of Criminal Justice (TDCJ) and the Texas Department of Mental Health and Mental Retardation (TDMHMR) to determine if any beneficiaries, whose incarceration status on the date of service could not be determined, were in custody of these State entities.
- Contacted local jurisdictions to determine if any beneficiaries, whose incarceration status on the date of service could not be determined, were in custody of local authorities.

We conducted our review in accordance with generally accepted government auditing standards. Our review was limited in scope. The internal control review was limited to performing inquiries at the contractor level to determine if they have controls in place to detect claims submitted on behalf of incarcerated beneficiaries. Our review was not intended to be a full scale internal control assessment of the suppliers/providers and was more limited than that which would be necessary to express an opinion on the adequacy of the suppliers' or providers' operations taken as a whole. The objective of our audit did not require an understanding or assessment of the overall internal control structure of the suppliers and providers. We performed our review during the period October 2001 through August 2002.

RESULTS

Because prisoner data from the SSA was not contained in CMS's records, the Medicare fiscal intermediary and carrier in Texas did not have controls in place to detect claims submitted on behalf of incarcerated beneficiaries.

We found the Medicare payment for 90 of 100 claims was appropriate. Of the 90 claims, 55 claims were allowable because the beneficiary was not incarcerated at the time of the service. The remaining 35 allowable claims were for beneficiaries who were found to be NGRI or IST and placed in psychiatric facilities. Texas laws deem these beneficiaries to be "patients" rather than "prisoners". As such, under Texas laws, these beneficiaries are responsible for their health care costs. Under current CMS guidelines, a distinction in legal status of groups of beneficiaries is permissible. The Medicare program will be responsible for coverage as long as there is a law requiring the individual in custody to pay for medical services and the government entity enforces the requirements for all individuals in custody with the same legal status. This separation of beneficiaries by groups can result in Medicare coverage for one group (in Texas this group would be the NGRIs or ISTs deemed to be patients) and the non-coverage of another group (in this case those in TDCJ or local correctional facilities). Because of this dichotomy, we found that payment for these 35 claims in our review were allowable.

We determined that five Medicare payments were unallowable under Medicare reimbursement requirements. These five payments were made on behalf of beneficiaries in custody of TDCJ or local jurisdictions during the time services were provided.

In addition, for five payments we were unable to determine the incarceration status of the beneficiaries at the time of medical services and we were therefore unable to determine the allowability of the Medicare claim. The following table summarizes the results of our review:

<i>Description</i>	<i>Sample Amount</i>	<i>Number of Claims</i>	<i>Number of Beneficiaries</i>
<i>Allowable</i>	\$45,034	90	56
<i>Unallowable</i>	150	5	5
<i>Unable to determine</i>	151	5	5
<i>Total</i>	\$45,335	100	66 ¹

ALLOWABLE CLAIMS

We determined that Medicare payments made for 90 claims totaling \$45,034 met Medicare reimbursement requirements. Of these 90 claims:

- 55 were submitted on behalf of 36 beneficiaries not in custody; and
- 35 were submitted on behalf of 20 beneficiaries placed in State or county-operated psychiatric facilities after they were found to be either NGRI or IST.

Our review showed that 55 claims were allowable because the beneficiary was not incarcerated at the time of the Medicare service. We will share our findings with SSA for the beneficiaries who we believe were not incarcerated on the date of service. For any client of TDMHMR facilities, Texas laws requires the client, the client's spouse, or other person of legal responsibility pay the expenses for support, maintenance, and treatment of the client. Of the 35 claims submitted on behalf of beneficiaries found to be either NGRI or IST, 33 claims were for beneficiaries in TDMHMR facilities. One claim was for a beneficiary in custody of a Missouri psychiatric facility. Missouri law requires that patients reimburse the state for their cost of care while in state psychiatric facilities. The remaining claim was for a beneficiary in a county-operated psychiatric facility. Texas law applicable to this facility also requires that payment for services be based on an individual's ability to pay. Therefore, if the individual has Medicare coverage, then Medicare will be billed.

UNALLOWABLE CLAIMS

We identified payments for five claims totaling \$150 that were unallowable under Medicare reimbursement requirements. Title 42 CFR 411.4 states that the Medicare program may not pay for services provided to beneficiaries who are in the custody of

¹ Although we had 65 unique beneficiaries in our sample, the total here is 66. One beneficiary had two claims in our sample that fell within two separate categories.

penal authorities unless there is a law requiring that all individuals repay for such services and enforce that requirement by pursuing collection for repayment. Unless the State or other government component operating the prison establishes that these requirements are met, it is presumed to be responsible for the medical needs of its inmates Beneficiaries Incarcerated by the Texas Department of Criminal Justice

Beneficiaries Incarcerated by the Texas Department of Criminal Justice

Two claims in our sample were for beneficiaries in custody of the TDCJ during the time that the medical services were provided. According to the Texas Government Code-Chapter 501, the TDCJ's Correctional Managed Health Care Committee is responsible for developing a managed health care plan for all persons confined by the TDCJ. Healthcare costs of persons confined by the TDCJ are funded by the State of Texas. Thus, the Medicare payments for these two claims, totaling \$105, are unallowable.

- For one claim, a recurring billing account was set up prior to the beneficiary's incarceration date. The billing office was not notified that the beneficiary had become incarcerated; therefore, Medicare continued to be billed.
- For the other claim, the provider identified the beneficiary as a prisoner during admittance. However, the beneficiary was also identified as having Medicare coverage. The provider's system is set up to bill the higher financial class when more than one financial class is identified for a patient. Because a prisoner has an indigent status, Medicare was the higher financial class and inappropriately billed.

Beneficiaries Incarcerated by Texas Counties

A Texas law states that prisoners who receive medical or health services while in custody of a county jail are required to pay for such services. However, the policy of three counties that housed three beneficiaries within our sample is not to bill Medicare for any medical services received by prisoners in their custody. Because these counties are not enforcing the State law, the Medicare payments for these three claims, totaling \$45, are improper.

- For one claim, the provider initially assigned the service a "do not bill" status due to the beneficiary's incarceration. However, the provider's internal claims processing system continued to search for insurance coverage and identified Medicare and Medicaid coverage. When this coverage was identified, the service was incorrectly submitted to both Medicare and Medicaid.
- For another claim, the provider stated that when the beneficiary was inaccurately identified as a Medicare patient and not a prisoner, Medicare was mistakenly billed.

- For the remaining claim, the provider believed that the county jail is only responsible for an injury or accident that is due to the jail's negligence. According to the provider, a patient or his primary insurance will be billed for an illness or personal injury. Because this claim was for a personal injury, the provider billed the beneficiary's primary insurance, Medicare.

UNABLE TO DETERMINE ALLOWABILITY OF CLAIMS

- We were unable to determine the whereabouts, at the time the services were rendered, of five beneficiaries who had five claims totaling \$151 in our sample. We contacted the FBOP, TDCJ, and local jurisdictions during our attempts to locate these beneficiaries. We also contacted the TDMHMR to determine if these beneficiaries were in State psychiatric facilities on the dates of service. We found some incarceration information on three of the beneficiaries, including one Federal prisoner, but the information was inconclusive to determine the whereabouts of the beneficiaries on the dates the services were rendered.
- For the other two beneficiaries, we could find no record of any encounters with correction facilities or psychiatric facilities in the State of Texas.

Since we were unable to determine if these beneficiaries were in custody at the time the services were rendered, we were unable to determine the allowability of the Medicare payments. Passage of time and transfers between facilities contributed to making the process of determining the custody status of the beneficiary at the time of service a cumbersome and difficult task.

CONCLUSIONS AND RECOMMENDATIONS

Our review in Texas determined that five claims out of our sample of 100 claims did not meet Medicare reimbursement requirements. We did not examine the remaining 3,773 claims in the universe. If CMS decides to consider readjudication for these remaining claims, we believe a cost benefit analysis should be done taking into consideration the low error rate, the age of the claims, and the difficulties we encountered in determining the whereabouts of beneficiaries due to the age of the claims.

We found during our audit period that Medicare payments made on behalf of NGRI and IST beneficiaries in State and community mental health centers, or psychiatric hospitals were allowable because of provisions in Texas law that require these individuals to pay for their medical care and these facilities implement this provision with due diligence. However, we believe that CMS through its regional offices needs to monitor these claims in the future to ensure these conditions for payment continue to be met.

As a result of our April 25, 2001 report, we have been informed that CMS plans to establish an edit in CWF that will deny claims for incarcerated beneficiaries. Claims

meeting the conditions for payment will not be subject to this edit if the supplier or provider submitting the claim certifies, by using a modifier or condition code on the claim, that he or she has been instructed by the State or local government component that it is appropriate to bill Medicare for these services. The modifier or condition code will be pivotal in paying or denying claims for incarcerated beneficiaries.

We, therefore, recommend that the CMS regional office:

- require its contractors to monitor future claims made on behalf of beneficiaries placed in State or county-operated facilities after being found NGRI or IST to ensure the conditions for payment continue to be met;
- require its contractors to educate suppliers and providers on the proper use of the modifier or condition code after implementation of the edit; and
- require its contractors to monitor claims with the modifier or condition code after implementation to assure the conditions required in 42 CFR 411.4 (b) are met.

AUDITEE COMMENTS

In their written response to our draft report, CMS officials agreed with the findings and recommendations and stated they will work with the contractors in Region VI to ensure that our recommendations are carried out properly. They believe the recommended edit will be operational on April 1, 2003. Prior to that date, they will work with their contractors to educate physicians and suppliers on the requirements explained in 42 CFR 411.4 (b) and the proper use of the modifier or condition code. (For complete text, see appendix A).



DEPARTMENT OF HEALTH & HUMAN SERVICES
Centers for Medicare & Medicaid Services
James Randolph Farris, M.D.
Regional Administrator

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October 7, 2002

James Hargrave
Audit Manager
U.S. Department of Health and Human Services
3625 NW 56th Street, Room 101
Oklahoma City, Oklahoma 73112

Regarding: Common Identification Number: A-06-0200008

Dear Mr. Hargrove:

Thank you for the opportunity to comment on your draft report entitled "Review of Medicare Payments for Services Provided to Incarcerated Beneficiaries in the State of Texas." We concur with the findings and recommendations in your report and will work with the contractors in our region to ensure that your recommendations are carried out properly.

As noted in your report, we are establishing a national CWF edit that will deny claims for incarcerated beneficiaries. Based upon contacts with staff in our Central Office in Baltimore, we think that this edit will be operational on April 1, 2003. Prior to that date, we will work with our contractors to educate physicians and suppliers on the requirements explained in 42 CFR 411.4 (b) and the proper use of the modifier or condition code. TrailBlazer Health Enterprises, LLC, (the Medicare contractor for the State of Texas) has already placed reminders in its newsletters and on its website and plans on further education as the activation of the edit nears.

We were particularly interested in your findings concerning the rather large number of beneficiaries in the category of "not guilty by reason of insanity" and "incompetent to stand trial." We know that many of these individuals fall under the jurisdiction of the Texas Department of Mental Health and Mental Retardation (TDMHMR) which is heavily dependent upon Medicare funding for its operations. Therefore, members of my staff have been in touch with representatives from TDMHMR to ensure their understanding of our policies and act as a liaison between their organization and TrailBlazer.



If you have questions or if we can be of further assistance, please contact me or Terry Bird of my staff at (214) 767-6466.

Sincerely,

A handwritten signature in black ink, appearing to read "Randolph Farris", followed by a period.

James Randolph Farris, M.D.
Regional Administrator